

## **DISCLAIMER**

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## **APPLICATION OF**

**CINCAP MARTINSVILLE, LLC**

**CASE NO. PUE010169**

**For a certificate of public convenience and  
necessity for electric generation facilities  
in the City of Martinsville**

## **REPORT OF DEBORAH V. ELLENBERG, CHIEF HEARING EXAMINER**

**January 31, 2002**

On March 27, 2001, CinCap Martinsville, LLC (“CinCap” or “Applicant”) filed an Application with supporting testimony and exhibits requesting that the Commission grant it a certificate of public convenience and necessity (“CPCN”) under the Utility Facilities Act<sup>1</sup> to construct, own and operate a 330 MW natural gas-fired electric generating facility (the “Facility”) at the Commerce Court Industrial Park in the City of Martinsville, Virginia. The Application included the testimony of Sergio Hoyos, director of project development for Cinergy Capital and Trading, Inc. (“Cinergy Capital”) and W. Thomas Chaney, environmental coordinator, business development support, for Cinergy Corp. (“Cinergy”). The Application was supplemented on May 10, 2001.

The Applicant also seeks an exemption from the provisions of Chapter 10 of Title 56, pursuant to Va. Code § 56-265.2 B, and interim approval to make financial expenditures and undertake preliminary construction work, pursuant to Va. Code § 56-234.3.

On May 18, 2001, the Commission entered an order requiring CinCap to provide public notice of its Application, established a procedural schedule for the filing of testimony and exhibits, and scheduled an evidentiary hearing for September 28, 2001. Southwestern-Virginia Gas Company (“Southwestern Gas”) filed its Notice of Participation on June 21, 2001.

CinCap filed the supplemental testimony and additional supplemental testimony of Messrs. Hoyos and Chaney on May 30, 2001 and July 16, 2001, respectively.

On August 24, 2001, the Staff filed the testimony of Staff witnesses Farris M. Maddox, principal financial analyst in the Commission’s Division of Economics and Finance; Gregory L. Abbott, utilities analyst in the Commission’s Division of Energy Regulation; and Mark K. Carsley, principal research analyst in the Commission’s Division of Economics and Finance. CinCap filed the rebuttal testimony of Messrs. Hoyos and Chaney on September 4, 2001.

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<sup>1</sup>Virginia Code § 56-265 et seq.

On September 18, 2001, the evidentiary hearing was convened as scheduled. Stephen H. Watts, II, Esquire, appeared on behalf of CinCap. Wayne N. Smith, Esquire, appeared on behalf of Staff. Guy T. Tripp, III, Esquire, appeared on behalf of Southwestern Gas.

Dr. Mark A. Crabtree, mayor of the City of Martinsville, appeared as a public witness to support the application. All prefiled testimony was received into the record without cross-examination by agreement of counsel. A Stipulation executed by CinCap, Staff, and Southwestern Gas urged the Commission to approve the Application and was also received into the record.

Proof of notice was marked and received as Exhibit A. Transcripts of the hearing are filed with this Report.

## **SUMMARY OF THE RECORD**

CinCap is a wholly owned subsidiary of Cinergy Capital which is in turn a wholly owned subsidiary of Cinergy,<sup>2</sup> a diversified energy company. The Applicant is a single purpose entity created to construct, own and operate the facility. It was formed as a limited liability company under the laws of Delaware and received a certificate of registration to transact business in Virginia on April 3, 2001.<sup>3</sup>

CinCap proposes to construct and operate a nominal 330 MW natural gas-fired peaking facility using four General Electric model PG7121EA high efficiency simple-cycle combustion turbine generating units.<sup>4</sup> The testimony of Mr. Hoyos provided an overview of the project, including financial, technical and managerial viability, a description of the project, its operational plans, and the proposed schedule and benefits. The direct testimony of Mr. Chaney addressed the environmental impacts of the project and how they will be mitigated. His supplemental testimony clarified arrangements for interconnecting the project with the electric transmission grid and included a copy of the application for an air permit filed with the DEQ on April 26, 2001. Additional supplemental testimony provided a matrix of the status of the various permits and approvals necessary to construct the project.

The Facility will burn only natural gas, and there is no provision for operation on fuel oil.<sup>5</sup> The Applicant holds an option for a parcel of land approximately 20 acres in size located in the Commerce Court Industrial Park in the City of Martinsville. The site is zoned as a heavy manufacturing district. Power generation and electrical substations are permitted uses, therefore no zoning or land use approvals are required.<sup>6</sup> The project is expected to cost \$150 to \$180 million. The project will be built and operated as a merchant power plant selling to the wholesale markets and will qualify as an exempt wholesale generator under the Public Utility Holding Company Act of 1935.<sup>7</sup> Commercial operation is scheduled to begin in May 2003.<sup>8</sup>

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<sup>2</sup>Exhibit FMM-9, at 2.

<sup>3</sup>Id.

<sup>4</sup>Exhibit SH-2, at 7-10 and 16.

<sup>5</sup>Id.

<sup>6</sup>Exhibit SH-2, at 5-6.

<sup>7</sup>Id. at 5.

<sup>8</sup>Exhibit GLA-8, at 2.

The project will interconnect with an existing 138 kV American Electric Power-Virginia (“AEP-VA”) transmission line under an open access transmission tariff approved by the Federal Energy Regulatory Commission. A new substation owned and operated by AEP-VA will interconnect with the project by an approximately 600-foot long transmission line owned and operated by the City of Martinsville. AEP-VA is conducting a generator interconnection study to define the details of interconnection, equipment configuration, and the costs and schedule for completing the work. Any additional costs resulting from the interconnection will be borne by CinCap.<sup>9</sup>

Natural gas will be delivered in one of three possible ways. First, an existing four-inch natural gas pipeline owned by Southwestern running from Transcontinental Gas Pipe Line Corporation (“Transco”) could be replaced by a 17-mile new 16-inch pipeline using existing right-of-way. New right-of-way would need to be acquired to continue the 16-inch pipeline for six miles to the plant location.<sup>10</sup> Southwestern holds a certificate of public convenience and necessity issued by the Commission to provide gas service in the City of Martinsville. CinCap may obtain natural gas from existing or proposed interstate pipelines directly or indirectly through Southwestern. Second, Transco could build, own and operate a new 20-inch lateral approximately 22 miles from its interstate pipeline to the project. Third, Duke Energy, which sponsors the proposed Patriot pipeline, could build a 10-mile lateral interconnecting the project with the Patriot line.<sup>11</sup> Any off-site laterals between the project and any interstate pipeline companies would not be considered part of the Facility to be certificated in this case. CinCap plans to purchase commodity gas from wellhead suppliers.

Staff witness Gregory Abbott filed testimony addressing the effect of the project on the rates and reliability of AEP-VA. He reviewed the status of environmental permits, presented a summary and recommendations submitted by the Department of Environmental Quality (“DEQ”), and discussed the experience of the Applicant in constructing and operating generation facilities, the fuel arrangements, and the technical and economic viability of the project. Staff believes any of the fuel options would be viable alternatives for the delivery of natural gas to the project. Farris M. Maddox addressed whether CinCap has the financial ability to construct the proposed Facility, and Mark Carsley discussed the economic benefits to be derived from the project and evaluated the public interest.

The Applicant and Staff reported that Cinergy, the Applicant’s parent, also has experience building electric and combined heat plant generation. It owns or operates nearly 21,000 MW of generation that is either under construction or in actual operation. Staff believes that the Applicant with Cinergy’s support is capable of developing the project.<sup>12</sup> Staff also believes that the Applicant has a well-developed preliminary plan for the project.<sup>13</sup> Funding for the project will come from

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<sup>9</sup>Exhibits SH-4, at 11 and GLA-8, at 3.

<sup>10</sup>Exhibit GLA-8, at 5.

<sup>11</sup>Exhibit SH-2, at 10-11.

<sup>12</sup>Exhibit GLA-8, at 4.

<sup>13</sup>Exhibit GLA-8, at 12.

equity financing provided by Cinergy.<sup>14</sup> In Staff's opinion, CinCap thus has access to the capital necessary to construct and operate the project.<sup>15</sup>

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<sup>14</sup>Exhibit FMM-9, at 3.

<sup>15</sup>Exhibit FMM-9, at 4.

The Facility will be located in an area that is in attainment with the National Ambient Air Quality Standards or is unclassified for particulate matter, sulfur dioxide (SO<sub>2</sub>), carbon monoxide (CO), ozone, nitrogen oxide (NO<sub>x</sub>). The project requires a Virginia State Major New Source permit because it will emit over 100 tons of CO and NO<sub>x</sub> but under the applicable Federal Prevention of Significant Deterioration (“PSD”) permitting requirements, the project will be a non-PSD source because it will not emit more than 250 tons per year of any criteria pollutants.

The project is also expected to be subject to the Title IV Federal Acid Rain Provisions which require the project, if necessary, to obtain SO<sub>2</sub> emission allowances annually.<sup>16</sup> CinCap will be required to receive a Virginia Title V Operating Permit after the facility begins operation. In addition, the project site may be within 100 kilometers of the James River Face Wilderness Area and potentially the Shenandoah National Park, therefore the National Park Service and the U.S. Environmental Protection Agency may also be involved with DEQ in the emissions modeling protocol.<sup>17</sup>

The DEQ coordinated a review by the various state and local agencies responsible for permits associated with the project. A summary of that review is contained in Staff witness Abbott’s testimony. DEQ generally supports the project and offered recommendations for minimizing any potential impacts to natural resources and for compliance with applicable legal requirements. Those recommendations are as follows:

- Comply with all the conditions of permits and approvals listed in the DEQ Comments.
- Obtain the Erosion and Sediment Control Plan and Air Permit approvals prior to any land disturbance at the site.
- Ensure that complete information is provided to the DEQ’s Water Protection Permit Program Office and the Army Corps of Engineers, Regulatory Branch, Norfolk District concerning the routes and environmental impacts of the gas pipelines contemplated to serve this project, prior to construction of the pipelines.
- Provide information (example, wetlands delineation maps depicting the footprint of the plant and associated facilities) to the Army Corps of Engineers, Regulatory Branch, Norfolk District to substantiate the statement that wetlands will not be affected by this project, prior to construction activities.
- Conduct a cultural resources survey of the project area, including identification of both architectural and archaeological resources, and provide the resulting report to the Department of Historic Resources prior to construction activities.

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<sup>16</sup>Exhibit WTC-3, at 2-3.

<sup>17</sup>Id. at 4.

- Implement measures to protect trees during the construction phase of the project.
- Use the least toxic pesticide or herbicide effective for pest control and landscape maintenance, if pesticides and/or herbicides must be used.
- Follow the principles of pollution prevention in constructing and operating the power plant and associated facilities.

Staff supported those DEQ recommendations and particularly noted that complete information should be provided to the DEQ and the Army Corps of Engineers concerning the routes and environmental impacts of the gas pipelines contemplated to serve the project prior to construction, and that wetlands delineation maps and other relevant information should be provided to the Army Corps of Engineers to verify that wetlands will not be affected by the project.<sup>18</sup> CinCap has committed to comply with all permitting requirements, take all mitigation measures necessary, and satisfy all of the recommendations of the DEQ.<sup>19</sup>

## **DISCUSSION**

This Application was filed prior to January 1, 2002, and accordingly, the standards applicable to approval at the time of the Application were set forth in Virginia Code §§ 56-265.2 B, 56-580 D, 56-46.1 and 56-596 A. CinCap thus sought approval under, and offered evidence to support the findings required, in Code § 56-265.2 B. The Virginia Electric Utility Restructuring Act (“the Restructuring Act”),<sup>20</sup> however, mandates that “[o]n and after January 1, 2002, the generation of electric energy shall no longer be subject to regulation under this title [Title 56 Public Service Companies] except as specified in this chapter [the Restructuring Act].”<sup>21</sup> The threshold issue in this case is therefore a consideration of what standards should now be applied to this application that was filed and heard before January 1, 2002.

The Commission has held that the provisions of the Restructuring Act operate to supplant the requirements for approval contained in §§ 56-234.3 and 56-265.2 on and after January 1, 2002.<sup>22</sup> The Commission found that:

[Section] 56-580 D is designed to replace § 56-265.2 with respect to generation. Specifically, much of the text of § 56-580 D that authorizes the Commission to permit the construction of generating facilities is drawn virtually verbatim from § 56-265.2 B. The material difference is that § 56-580 D requires only two of the three findings required under § 56-265.2 B, eliminating the requirement that a

<sup>18</sup>Exhibit GLA-8 at 4, and Appendix A.

<sup>19</sup>Exhibit WTC-12, at 2.

<sup>20</sup>Virginia Code § 56-576 *et seq.*

<sup>21</sup>Virginia Code § 56-577 A 3.

<sup>22</sup>*Commonwealth of Virginia at the relation of the State Corporation Commission Ex Parte: In the matter of amending filing requirements for applications to construct and operate electric generating facilities*, Case No. PUE010313, Order dated August 3, 2001.

proposed facility will have no material adverse effect upon the rates paid by customers of any regulated public utility in the Commonwealth (footnotes omitted).<sup>23</sup>

Further, the Commission has previously applied a new legislative standard in considering certification of an electric generation facility. An application for a new generating facility in Accomack County, Virginia, by Commonwealth Chesapeake Company was filed in September of 1996. The standards for certification were changed by legislation effective March 13, 1998. The change relaxed the standards for facilities that would not be included in the rate base of any regulated utility. A local hearing to receive testimony from public witnesses was held on March 12, 1998, and the evidentiary hearing in Richmond was held on April 10, 1998. The Commission, applying the relaxed standards in the new statute, granted the facility a CPCN.<sup>24</sup> As § 56-580 D eliminates one of the requirements contained in § 56-265.2 B, but does not add any new, more rigorous requirements, the Applicant is not prejudiced if only the new standards are applied. Thus, I believe it could be argued that the requirements of § 56-265.2 B no longer need be considered.

However, the Commission recently remanded a similarly situated application for approval of an electric generating facility proposed by Tenaska Virginia Partners, L.P.<sup>25</sup> In that case, the application had been filed, the hearing conducted, and a hearing examiner's report issued, but a final order had not been issued prior to January 1, 2002.

In the *Tenaska* case the Commission found that "[b]oth sections [ §§ 56-265.2 and 56-580 D ] apply. . . and their provisions overlap to a large extent."<sup>26</sup> The Commission evaluated that project based on the criteria established in §§ 56-265.2 B, 56-580 D, 56-46.1 and 56-596 A. The Commission addressed the specific criteria identified in those Code sections and found that the analysis should include consideration of reliability, competition, rates, environment, economic development and the public interest.<sup>27</sup>

Therefore this Application also must be assessed under the criteria defined by the Commission. Virginia Code § 56-265.2 requires the Commission to find that generation facilities:

(i) will have no material adverse effect upon the rates paid by customers of any regulated public utility in the Commonwealth; (ii) will have no material adverse effect upon reliability of electric service provided by any such regulated public utility; and (iii) are not otherwise contrary to the public interest. . . the Commission shall give consideration to the effect of the facility and associated facilities, including transmission

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<sup>23</sup>*Id.* at 4.

<sup>24</sup>*Application of Commonwealth Chesapeake Corporation for approval of expenditures for new generation facilities pursuant to Va. Code § 56-234.3 and for a certificate of public convenience and necessity pursuant to Va. Code § 56-265.2*, Case No. PUE 960224, 1998 S.C.C. Ann. Rep. 335.

<sup>25</sup>*Application of Tenaska Virginia Partners, L.P. for approval of a certificate of public convenience and necessity pursuant to Virginia Code § 56-265.2, an exemption from Chapter 10 of Title 56, and interim approval to make financial commitments and undertake preliminary construction work*, Case No. PUE010039, Order (January 16, 2002) ("*Tenaska*").

<sup>26</sup>*Tenaska* Order at 11.

<sup>27</sup>*Id.* at 13-14.

lines and equipment, on the environment and establish such conditions as may be desirable or necessary to minimize adverse environmental impact as provided in § 56-46.1.

Virginia Code § 56-580 D provides in applicable part:

The Commission may permit the construction and operation of electrical generating facilities upon a finding that such generating facility and associated facilities including transmission lines and equipment (i) will have no material adverse effect upon reliability of electric service provided by any regulated public utility and (ii) are not otherwise contrary to the public interest....the Commission shall give consideration to the effect of the facility and associated facilities, including transmission lines and equipment, on the environment and establish such conditions as may be desirable or necessary to minimize adverse environmental impact as provided in § 56-46.1.

Section 56-46.1 requires the Commission to consider the impact of a facility on the environment and establish conditions that may be desirable or necessary to minimize any adverse environmental impacts. It also requires the Commission to consider any improvements in service reliability that may result from the facility and allows the Commission to consider the effect of the facility on economic development within the Commonwealth. Section 56-596 A requires consideration of, among other things, the goals of advancement of competition and economic development in Virginia.

Thus this analysis should also include consideration of reliability, competition, rates, environment, economic development and the public interest. This case presents a proposed electric generation facility that is beneficial to, and supported by, the surrounding community. Not one word of opposition was written or spoken about this project.

The cost of construction, maintenance, and operation of the Facility will be borne by the Applicant and not by any regulated utility. The Applicant will pay for necessary improvements if any upgrades are required to the AEP-VA grid as a result of the interconnection with the project. Thus it appears that the project will have no material adverse effect upon the rates or reliability of electric service provided by any regulated electric public utility.

Firm natural gas transportation capacity will not be obtained due to the expected limited number of hours of operation. Moreover, the units are expected to run less often during the winter due to the limited availability of gas.<sup>28</sup> There should therefore not be an adverse impact on natural gas rates or transportation capacity. Indeed, the system upgrades to provide natural gas to the facility could even enhance natural gas pipeline capacity.

It has been established that the electricity produced at the facility will be sold exclusively on the wholesale market, and the capacity will not be controlled by the incumbent utility. It should thus facilitate development of wholesale competition in the region.

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<sup>28</sup>Exhibit SH-2, at 8.

It also was established that the Facility will not have a material effect on the environment, that CinCap will comply with all federal and state environmental permitting requirements, and further, that Applicant will comply with the DEQ recommendations set forth above.

The combustion of natural gas at the Facility will have the potential to generate air contaminant emissions. The primary air contaminants will be NO<sub>x</sub>, carbon monoxide (CO), particulate matter (PM<sub>10</sub>), volatile organic compounds (VOC), and small quantities of sulfur dioxide (SO<sub>2</sub>) and sulfuric acid.<sup>29</sup>

<b>Emissions, pounds/hour (maximum hourly emissions)</b>		<b>Emissions, tons/year (maximum potential)</b>	
NO <sub>x</sub>	220	NO <sub>x</sub>	244
CO	215	CO	248
VOC	19	VOC	21
SO <sub>2</sub>	22	SO <sub>2</sub>	25
PM <sub>10</sub>	41	PM <sub>10</sub>	47
Sulfuric Acid	3.2	Sulfuric Acid	3.8

As a peaking facility, hours of actual operation will be limited. The Best Available Control Technology (“BACT”) and natural gas fuel will be used to control air emissions. To minimize nitrogen oxide (“NO<sub>x</sub>”) emissions, the project will employ dry low NO<sub>x</sub> combustors, a state-of-the-art emissions reduction technology to achieve no more than 15 parts per million concentration of NO<sub>x</sub> at full load. The combustors are designed to maintain the mixture of fuel and air near the lean flammability limit of the mixture. The turbine manufacturer guarantees the performance. Dispersion modeling of the proposed emissions indicates that the maximum impact on ambient concentrations of NO<sub>x</sub> is minimal.<sup>30</sup> Although there are other generation projects proposed in the surrounding area,<sup>31</sup> no witness raised any concern with cumulative air impacts.

CinCap does not plan to develop groundwater resources, but plans to draw approximately 125,000 gallons per day from the City of Martinsville water system. There will be no need for the discharge of cooling water because it will be consumed in the combustion process. There will be minimal process wastewater and sanitary wastewater discharges that will be directed to the City of Martinsville’s treatment works.<sup>32</sup> The City counts the sale of these services among the economic benefits that it will enjoy from the facility.

It was also clearly established that the project will provide a significant economic benefit to the City of Martinsville, and is not otherwise contrary to the public interest. Staff witness Carsley addressed the economic benefits to be derived from the construction of the proposed facility. He

<sup>29</sup>Exhibit WTC-5, Appendix C.

<sup>30</sup>Exhibit SH-2, at 15.

<sup>31</sup>*Application of Mirant Danville*, Case No. PUE010430, DCC 010830170, filed August 16, 2001 and *Application of Henry County Power*, Case No. PUE010300, DCC 010520185, filed May 10, 2001.

<sup>32</sup>Exhibit WTC-3, at 6.

testified that the most substantial benefits are property tax revenues that will be paid to the City of Martinsville. It is expected that the Facility will generate \$1.4 million in real estate property tax revenues annually.<sup>33</sup> CinCap also estimates that 200 to 250 construction workers will be employed for eleven months during the construction phase.<sup>34</sup> Mr. Carsley reported that the City expects to receive \$60,000 a year from the sale of water to CinCap.<sup>35</sup> Staff concluded that from the point of view of economic development and growth, the project appears to be reasonable and in the public interest.<sup>36</sup>

Letters of support were received from the Martinsville Henry County Chamber of Commerce and the Lester Group. Mayor Crabtree appeared as a public witness and testified that he was accompanied by Earl B. Reynolds, Jr., city manager, and Tom Harned, director of economic development, in a show of support. He expressed the City's support for the project, and presented a resolution of the City Council dated June 26, 2001, unanimously supporting the project. He testified that in December of 1999, Tultex Corporation, the City's largest taxpayer and employer declared bankruptcy. The City has also lost several other commercial and industrial taxpayers and employers. Cinergy's investment will be the largest in the 200-year history of Martinsville and will represent about 20 percent of its tax base. In his opinion, the generation facility will promote employment, capital investment, industrial expansion, recruitment, and construction activity in his community. "This project is absolutely critical to the orderly and healthy development of Martinsville and the surrounding area... Without reservation, the City of Martinsville endorses CinCap-Martinsville, LLC's request ...."<sup>37</sup>

Moreover, he also testified that Cinergy has been the supplier of electricity on a wholesale basis to the City for several years and the City was pleased with the service that it has received. He testified that the project was ideally situated on an industrial lot appropriately zoned for heavy manufacturing and power generation and away from residential neighborhoods.

CinCap also seeks exemption from the provisions of Chapter 10 of Title 56 of the Code of Virginia. It will be a qualified exempt wholesale generator under the Public Utility Holding Company Act of 1935. It will sell power from the proposed facility on a merchant basis exclusively at wholesale. Accordingly, it will be subject to regulation by the Federal Energy Regulatory Commission, and this Facility will not be included in the rate base of any public utility whose rates are regulated by this Commission. It is therefore reasonable to exempt CinCap under § 56-265.2 B, if such exemption is still considered necessary.

As discussed earlier, it is also debatable whether CinCap even needs interim approval to make financial expenditures and undertake preliminary construction work after January 1, 2002, however, to the extent necessary, such approval should be granted. Such expenditures would be made at the developer's own risk and would not be borne by ratepayers of any regulated utility.

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<sup>33</sup>Exhibit MKC-10, at 2.

<sup>34</sup>Id.

<sup>35</sup>Id. at 3.

<sup>36</sup>Id. at 4.

<sup>37</sup>Transcript 13.

Finally, the Commission has recently been considering “sunset” provisions in certificates, particularly for electric generating facilities. Such a provision should be applied here. Any certificate issued in this case should include a provision that the certificate will sunset if construction on the Facility has not begun within two years of the issuance of the certificate.

## **FINDINGS AND RECOMMENDATIONS**

Based on the evidence received in the case, I find that:

1. The Facility will have no material effect upon the rates paid by customers of any regulated utility in the Commonwealth;
2. The Facility will have no material adverse effect upon the reliability of electric service provided by any such regulated public utility;
3. The Facility should enhance development of electric competition in Virginia;
4. The Facility will have only a minimal impact on the environment;
5. CinCap shall comply with the conditions set forth in the DEQ’s Comments, Appendix A of Mr. Abbott’s prefiled testimony in the construction and operation of the Facility;
6. The Facility will have a significant and positive impact on economic development in the City of Martinsville;
7. The Facility is not otherwise contrary to the public interest;
8. All off-site lateral connections between the Facility and the facilities of interstate pipeline transmission companies are not considered part of this project to be certificated in this case;
9. The Commission should grant CinCap approval to construct the Facility and leave the record of these proceedings open pending receipt of copies of all necessary permits and verification that the recommendations made by the DEQ have been complied with, at which time the Commission should issue CinCap a CPCN with the provision that the certificate will sunset if construction on the facility has not begun within two years of the issuance of the certificate;
10. The Commission should grant CinCap an exemption, pursuant to Va. Code § 56-265.2 B, from Chapter 10 of Title 56 of the Code of Virginia if such exemption is still deemed necessary; and
11. The Commission should grant CinCap interim approval under § 56-234.3 to make financial expenditures and undertake preliminary work if such approval is still deemed necessary.

I therefore **RECOMMEND** the Commission enter an order that:

1. **ADOPTS** the Stipulation and the findings contained in this Report;
2. **GRANTS** CinCap interim approval, pursuant to Va. Code § 56-234.3, to make financial expenditures and undertake preliminary construction work on the facility;
3. **GRANTS** CinCap approval to construct the Facility pursuant to Va. Code § 56-265.2 and issue a certificate with the conditions set forth herein; and
4. **GRANTS** CinCap an exemption from Chapter 10 of Title 56 of the Code of Virginia pursuant to Va. Code § 56-265.2 B.

### **COMMENTS**

The parties are advised that any comments (Section 12.1-31 of the Code of Virginia and 5 VAC 5-20-120 C) to this Report must be filed with the Clerk of the Commission in writing, in an original and fifteen (15) copies, within fourteen (14) days from the date hereof. The mailing address to which any such filing must be sent is Document Control Center, P.O. Box 2118, Richmond, Virginia 23218. Any party filing such comments shall attach a certificate to the foot of such document certifying that copies have been mailed or delivered to all counsel of record and any such party not represented by counsel.

Respectfully submitted,

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Deborah V. Ellenberg  
Chief Hearing Examiner